



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

12-11-06
02:33 PM

In the Matter of the Application of
California American Water Company
(U 210 W) for a Certificate of Public
Convenience and Necessity to
Construct and Operate its Coastal Water
Project to Resolve the Long-Term
Water Supply Deficit in its Monterey
District and to Recover All Present and
Future Costs in Connection There with
in Rates

A.04-09-019

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION**

MONICA MCCRARY

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission

505 Van Ness Ave.

San Francisco, CA 94102

Email: mlm@cpuc.ca.gov

Phone: (415) 703-1288

Fax: (415) 703-2262

December 11, 2006

TABLE OF CONTENTS

I.	IRWUG EXEMPTION	1
	A. THE REQUESTED EXEMPTION IS UNNECESSARY	2
	B. THE CHANGES PROPOSED BY IRWUG AND CAL AM ARE NOT SUPPORTED BY THE RECORD.....	2
II.	CAL AM’S COMMENTS MISREPRESENT DRA’S ACTIONS	4
III.	CONCLUSION	5
CERTIFICATE OF SERVICE		

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
California American Water Company
(U 210 W) for a Certificate of Public
Convenience and Necessity to
Construct and Operate its Coastal Water
Project to Resolve the Long-Term
Water Supply Deficit in its Monterey
District and to Recover All Present and
Future Costs in Connection There with
in Rates.

A.04-09-019

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE PROPOSED DECISION**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files its Reply Comments on the Proposed Decision of Administrative Law Judge ("ALJ") Patrick. DRA's reply responds to the comments of California American Water Company ("Cal Am"), the Independent Reclaimed Water Users Group ("IRWUG"), and the Monterey Peninsula Water Management District ("MPWMD").

I. IRWUG EXEMPTION

In this proceeding IRWUG requested that the Commission grant IRWUG an exemption from paying Coastal Water Project ("CWP") surcharges on potable water used for irrigation because the contractual price its members pay for reclaimed water is tied to the tariff price of potable water supplied by Cal Am. Absent a specific exemption, the group will be required to pay increased rates for reclaimed water. The Proposed Decision ("PD") allows Cal Am to file a tariff to exempt the IRWUG from paying either of the adopted surcharges on water supplied for irrigation after the Water Reclamation Project is completed, which is scheduled for September of 2007.¹ Once the Reclamation Project is in

¹ Ordering Paragraphs ("OP") 12 states: With its comments on the proposed decision, CalAm shall provide a proposed new tariff for Commission review, to exempt Del Monte Forest golf courses from the Special Request 1 Surcharge and Special Request 2 Surcharge for water supplied to Del Monte Forest golf courses

(continued on next page)

place, IRWUG members will reduce their use of Cal Am potable water for golf course irrigation to zero, except in the case of emergencies. (PD, p. 27.) According to the Proposed Decision, once the exemption is in place, the IRWUG has to pay the surcharges on any potable water used for irrigation and domestic purposes.² However, the ALJ instructed Cal Am and IRWUG to file additional information on whether the surcharges should apply to emergency use of Cal Am potable water for irrigation, such as for flushing greens, once the Reclamation Expansion Project was in place. (*Id.* p. 29.)

A. The Requested Exemption is Unnecessary

IRWUG's request for an exemption from the surcharges for irrigation water may no longer be necessary. The rates that IRWUG pays for recycle water are set via a contract with MPWMD. (IRWUG/Bowhay, 5 RT 462.) In its comments on the Proposed Decision, MPWMD states “MPWMD will work with IRWUG and the Pebble Beach Company to modify the language in the Agreement for Sale of Recycled Water so that CWP surcharges are not part of the cost of reclaimed water.” (MPWMD Comments, p. 14.)

These parties should be encouraged to resolve this issue. Because both parties agree a change to the contract is needed, the Commission does not need to grant an exemption.

B. The changes proposed by IRWUG and Cal Am are not supported by the record.

In its comments, IRWUG requests two changes to the PD. First, IRWUG requests that its members be exempt from paying any surcharges on potable water used for irrigation effective immediately, rather than waiting until after the Water Reclamation Project begins when potable water use for irrigation will be at zero, and will only be used in emergencies. (IRWUG Comments, p. 5.) Second, IRWUG requests that the Commission adopt a new tariff that contains a 15 percent penalty on irrigation use of potable water above 15 acre feet

(continued from previous page)

for irrigation of golf courses. The tariff shall become effective after the Monterey Reclamation Expansion Project is placed in service, and approval of the tariff by the Commission

² OP 13 states: After the exemption is effective, if Del Monte Forest golf courses do use CalAm water for golf course irrigation, the surcharges shall be applied to such usage.

OP 14 states: The exemption from the surcharges shall not apply to Cal Am water used for domestic purposes by the Del Monte Forest golf courses.

annually, effective with the implementation of surcharge 1. (*Id.* p. 4.) Cal Am, however, proposes that this penalty take effect after the Water Reclamation Project comes on-line.³

DRA opposes both of these changes. As MPWMD states in its comments, if IRWUG members use potable water for irrigation, they should be subject to the same surcharges as any other potable water user. (MPWMD Comments, p. 14.) All users of potable water contribute to the need for the Coastal Water Project, regardless of its use.

The record is void of any discussion of what an immediate exemption from the surcharge on potable water used for irrigation will cost other customers. IRWUG witness Mr. Bowhay testified that over the last 10 years, 30 percent of IRWUG members' consumption is potable water. (IRWUG/Bowhay, 5 Reporters' Transcript ("RT") 464.) Any exemption from the surcharge on potable water usage would have to be made up by other customers. If an immediate exemption is granted, the Proposed Decision's Conclusion of Law stating that the exemption will not shift costs to other ratepayers is in error and would need to be changed. (PD, Conclusion of Law 14.)

IRWUG's witness, Mr. Bowhay, testified that after the Water Reclamation Project is completed in 2007, IRWUG members would purchase water from Cal Am for potable usage if emergencies situations arise such as major plant breakdowns. (IRWUG/Bowhay, 5 RT 463.) If Cal Am is required to serve IRWUG in emergency situations, Cal Am must plan for the capacity to do so. This capacity would be built into any new water supply project. Thus IRWUG members stand to benefit from any new water supply project because it provides IRWUG members with assurance that potable water will be available in emergency situations. Because its members will benefit from a new water supply project, IRWUG members should help pay for the cost of whatever facility is ultimately constructed.

IRWUG's and Cal Am's proposal to pay a 15 percent penalty for potable water usage above 15 acre feet annually does not contribute toward any new water supply project and is not supported by the record. No penalty figure or acre-feet exemption from the penalty was

³ As directed by the ALJ, Cal Am's comments on the PD include a proposed tariff addressing emergency potable water usage. DRA notes that the other provisions of this draft tariff do not implement the Proposed Decision's orders. For example, the proposed tariffs implement surcharge 2 on January 1, 2007 and not when a CPCN is granted.

ever proposed by any party in testimony or discussed on the record. The 15 percent penalty has no basis in the record and does not appear to even come close to the proposed surcharge amounts. If the Proposed Decision is adopted without modification and the Commission issues a CPCN for the CWP by the end of 2007, the proposed surcharges would amount to 25 percent on January 2008, 40 percent on July 1, 2008, 55 percent on January 1, 2009, and 70 percent on July 1, 2009⁴ substantially higher than the 15 percent penalty proposed by IRWUG and Cal Am. Moreover, there is no record supporting the 15-acre foot annual exemption for potable water used for irrigation from the penalty amount.

Neither Cal Am nor IRWUG propose that the penalty be used to reduce the costs of the Coastal Water Project or alternative project costs. While Surcharge 2 revenues would be used as a contribution to offset the costs of the Coastal Water Project, Cal Am and IRWUG members do not propose similar treatment of penalty revenues. Thus the penalty would just amount to additional revenue to Cal Am.

Under Section 1701.3(e) of the Public Utilities Code, the Commission is barred from adopting IRWUG's and Cal Am's proposal to exempt IRWUG members from the surcharges for potable water used for irrigation purposes because the proposal was never part of the record. Moreover, the proposal is unfair to other customers who, like IRWUG, have contributed to the community's efforts to reduce water demand from the Carmel River through various conservation efforts. The Monterey Community, as a whole, has worked together to keep water usage down. The Commission should not make a general exemption for only one such user. All users of potable water should contribute to the Coastal Water, or alternative water supply project.

II. CALAM'S COMMENTS MISREPRESENT DRA'S ACTIONS

In its Comments on the Proposed Decision, Cal Am criticizes DRA for not reviewing Cal Am environmental and engineering costs. Cal Am states: "It is regrettable that the Division of Ratepayer Advocates did not attempt to hire an expert to review the engineering

⁴ Cal Am and IRWUG propose reviewing this penalty in the next GRC schedule to be filed in January 2008. If this application is processed on time, the final decision would not be effective until January 2009. DRA notes the last GRC decision was issued a year late.

and environmental costs incurred through 2005 or notify the Commission that it would need more time to do so.”

DRA, however, did notify the Commission early in this proceeding that it did not have the required expertise to review many of the costs associated with this project. In its August 15, 2005 protest to Cal Am’s amended application, DRA stated “[b]ecause ORA does not have the necessary specialized expertise to review Cal Am’s construction and operation costs estimates, ORA requests that the Commission authorize ORA to retain an expert consultant, under a reimbursable contract, to review Cal Am’s application”⁵ (ORA Protest, p. 3.) At the October 5, 2005, Prehearing Conference DRA counsel again raised the issue and specifically stated that DRA’s auditor did not have the expertise needed in desalination to review the reasonableness of certain preconstruction costs and requested that Cal Am be ordered to reimburse DRA for the cost of hiring a consultant. (October 5, 2005 PHC RT 24.)

The ALJ stated that the issue would be addressed in ruling on the scope and scheduling of the proceeding. (*Id.* p. 26.) A scheduling ruling was not issued until almost six months later, on March 29, 2006, and the scoping memo was not issued until May 23, 2006 and neither addressed this issue. Even if one of the rulings had, DRA would not have had sufficient time at such a late point in the proceeding to hire consultant to review the costs.⁶

III. CONCLUSION

For the reasons stated above, the changes proposed by IRWUG and Cal Am regarding an exemption from the surcharges should be rejected. All users of Cal Am potable water should contribute to any water supply project.

⁵ Effective January 1, 2006 ORA’s name was changed to the Division of Ratepayer Advocates. (P.U. Code § 309.5.)

⁶ DRA’s testimony was due in mid-June.

Respectfully submitted,

/s/ MONICA MCCRARY

Monica McCrary
Staff Counsel

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Email: mlm@cpuc.ca.gov
Phone: (415) 703-1288
Fax: (415) 703-2262

December 11, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION** in **A.04-09-019** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **11th day of December, 2006** at San Francisco, California.

/s/ Joanne Lark
Joanne Lark

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

SERVICE LIST

A.04-09-019

TwoKillerBs@aol.com
connere@west.net
afhubb@aol.com
dave@laredolaw.net
mjdelpiero@aol.com
mdjoseph@adamsbroadwell.com
mlm@cpuc.ca.gov
LDolqueist@steefel.com
edwardoneill@dwt.com
dcarroll@downeybrand.com
jgeever@surfrider.org
townsley@amwater.com
ffarina@cox.net
lflowrey@nheh.com
shardgrave@rbf.com
sflavin@redshift.com
sleonard@amwater.com
andy@mpwmd.dst.ca.us
hjallen101@yahoo.com
wyrdjon@yahoo.com
tgulesserian@adamsbroadwell.com
EZigas@esassoc.com
lweiss@steefel.com
sleeper@steefel.com
chrishilen@dwt.com
jessnagtalon@gmail.com
jody_london_consulting@earthlink.net
hcooley@pacinst.org
abl@bkslawfirm.com
dstephen@amwater.com
bdp@cpuc.ca.gov
dsb@cpuc.ca.gov
flc@cpuc.ca.gov
jzr@cpuc.ca.gov
mlc@cpuc.ca.gov